

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 17-20261

ROXANNE MCGLADE,

Defendant.

**OPINION AND ORDER CONSTRUING DEFENDANT’S REPLY BRIEF FOR HER
MOTION TO VACATE SENTENCE AS A MOTION TO AMEND, GRANTING THE
MOTION TO AMEND, AND DIRECTING THE GOVERNMENT TO FILE A RESPONSE**

Defendant Roxanne McGlade pleaded guilty on February 5, 2018, to one count of conspiracy to interfere with commerce by robbery, 18 U.S.C. § 1951(a) and four counts of interference with commerce by robbery, 18 U.S.C. §§ 2, 1951(a). (ECF No. 46.) On June 5, 2018, the court sentenced her to 84 months imprisonment. (ECF No. 68, PageID.409.)

Defendant has filed a motion to vacate sentence under 28 U.S.C. § 2255. (ECF No. 252.) In the motion, she advances three claims: 1) that her attorney provided ineffective assistance of counsel for failing to argue for a minor role adjustment; 2) that her attorney was ineffective for not raising her history of mental health and domestic violence, and the attorney did not arrange a psychiatric evaluation; and 3) that her attorney improperly failed to argue for a departure based on duress. (*Id.*, PageID.511-16.) The government filed a response contesting the motion. (ECF No. 91.)

Defendant filed a reply brief stating several legal claims that were not included in the initial § 2255 motion. (ECF No. 101.) For instance, she now asserts that she was wrongfully denied the opportunity to file a direct appeal, and she claims that the court erred by directing her to participate in the Inmate Financial Responsibility Program. (*Id.*, PageID.786-89.) In addition, she alleges that her indictment was factually defective, that a “firearm and victim sustained injury” sentencing enhancement was improperly applied, and that her plea agreement lacked a factual basis, resulting in her “[pleading] guilty to a crime she never committed.” (*Id.*, PageID.790-804.)

Standing at twenty-seven pages, Defendant’s reply brief substantially exceeds this district’s established page limits. E.D. Mich. L.R. 7.1(d)(3)(B) (“The text of a reply brief, including footnotes and signatures, may not exceed 7 pages.”). Defendant also adds new legal claims in support of her motion to vacate, and it is well accepted that a party “cannot raise new issues in a reply brief . . . [she] can only respond to arguments raised for the first time in [the opposing party’s] brief.” *United States v. Campbell*, 279 F.3d 392, 401 (6th Cir. 2002).

Nonetheless, the court will provide Defendant a full opportunity to present her arguments in favor of the § 2255 motion. The court will construe her reply as a motion to amend her initial motion to vacate, and the court will grant the motion to amend. See *Coe v. Bell*, 161 F.3d 320, 342 (6th Cir. 1998) (quoting *Brooks v. Celeste*, 39 F.3d 125, 130 (6th Cir. 1994)) (“Under Rule 15(a), leave to amend a pleading shall be freely given when justice so requires.”).

Further, the court will direct the government to respond to Defendant’s newly submitted arguments. Defendant may reply to the government’s response, but she must

comply with the spatial requirements of a proper reply. See E.D. Mich. L.R. 7.1(d)(3)(B). The court will not allow Defendant to again amend her motion to vacate sentence, adding new claims that could have been brought in the initial §2255 motion, in response to the government's briefing. Accordingly,

IT IS ORDERED that Defendant's "Reply to Response to . . . Motion to Vacate Sentence" (ECF No. 101) is CONSTRUED as a Motion to Amend Defendant's "Motion to Vacate Sentence Under 28 U.S.C. § 2255" (ECF No. 84).

IT IS FURTHER ORDERED that the Motion to Amend (ECF No. 101) is GRANTED.

Finally, IT IS ORDERED that the government is DIRECTED to file a response to Defendant's newly amended § 2255 motion (ECF Nos. 84, 101) by **June 18, 2021**.

s/Robert H. Cleland /
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: May 20, 2021

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, May 20, 2021, by electronic and/or ordinary mail.

s/Lisa Wagner /
Case Manager and Deputy Clerk
(810) 292-6522

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